

STATE OF MICHIGAN
COURT OF APPEALS

In re CALVIN P. BENTLEY TRUST.

EMILY BENTLEY,

Petitioner-Appellee,

v

KAREN BENTLEY, JANA BENTLEY
MULLANEY, TERRY BENTLEY, COURTNEY
BENTLEY and WHITNEY BENTLEY,

Respondents-Appellants.

UNPUBLISHED

April 19, 2002

No. 223342

Shiawassee Probate Court

LC No. 97-029900-TI

Before: Fitzgerald, P.J., and Bandstra and K.F. Kelly, JJ.

PER CURIAM.

Respondents, the five children of Court P. Bentley and the remainder beneficiaries of the Calvin P. Bentley Trust, appeal as of right from a judgment in favor of petitioner, Emily Bentley, Court's surviving spouse and the personal representative of his estate. The judgment requires the Calvin P. Bentley Trust to pay the estate of Court Bentley \$40,206, representing the net interest income earned by the Calvin P. Bentley Trust in 1998. We affirm.

There is no dispute that Comerica Bank, Trustee of the Calvin P. Bentley Trust, determined that Court was entitled to the net income earned by the trust in 1998 and that the Trustee failed to distribute that income to Court solely as a result of a computer error. Respondents claim, however, that because Court's own trust generated "substantial income," which respondents claim was "undoubtedly" more than sufficient to meet Court's needs, Court was not entitled, under the express terms of the Calvin P. Bentley Trust, to the net income generated from the Calvin P. Bentley Trust in 1998.

In resolving a dispute regarding the meaning of a trust, a court's sole objective is to ascertain and give effect to the intent of the settlor. *In re Sykes Estate*, 131 Mich App 49, 53-54; 345 NW2d 642 (1983); *In re Nowels Estate*, 128 Mich App 174, 177; 339 NW2d 861 (1983). Such intent is gauged from the trust document itself, unless an ambiguity is present. *In re Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985). If an ambiguity exists, the court must look outside the document in order to carry out the settlor's intent and may consider the circumstances surrounding the creation of the document and the general rules of construction. *In*

re Butterfield Estate, 405 Mich 702, 711; 275 NW2d 262 (1979). The powers and duties of the trustee are similarly determined by looking at the trust instrument. *In re Butterfield Estate*, 418 Mich 241, 259; 341 NW2d 453 (1983). “As to those matters which the settlor has left to the discretion of the trustee, the courts will not interfere with the trustee’s exercise of his discretion unless the trustee has abused his discretion.” *In re Sykes Estate*, *supra* at 54. However, a trustee’s discretion is not unlimited; he must “exercise his discretion honestly and in good faith.” *In re Green Charitable Trust*, 172 Mich App 298, 313; 431 NW2d 492 (1988).

The relevant portions of the Calvin P. Bentley Trust provide as follows:

The Trustees shall pay or apply so much of the balance of the net income of each trust as the Trustees may determine necessary or desirable for the purposes hereinafter stated in such amounts as the Trustees in their sole discretion shall determine to or for the benefit of the daughter of the Donor for whom the trust is named, her children and her grandchildren, during the lifetime of the said daughter and her children living at the time of the death of the Donor. Any part of the income not so paid or applied shall be accumulated and added annually to the principal of the trust.

In exercising judgment and discretion in the payment or application of income and in the accumulation of any part thereof not so paid or applied, the Trustees shall give consideration to the respective needs and established standards of living of the several persons named or described above for their proper care, support and maintenance, and the support, maintenance and education of their dependents, and consideration also shall be given to the other sources of income or funds available to such persons to satisfy such needs and standards of living, as well as to the extent to which payment of income from the trust property and estate to or for such persons would actually be advisable, taking into account the tax liability created by such payment.

The plain and unambiguous language of the foregoing provisions gives the Trustee discretion to disburse net income to Court, considering his needs and established standard of living. In deciding whether to disburse such income, the provisions in question require the Trustee to consider, among other things, “other sources of income or funds available” to Court “to satisfy such needs and standards of living.” The provisions in question do not, however, prevent the disbursement of income to a beneficiary who has other sources of income; but merely require that the Trustee “consider” such “other sources of income or funds available” to the beneficiary prior to making a disbursement. Consequently, to the extent respondents interpret the above language to bar disbursement of funds to a beneficiary who has other sources of income, we find their position untenable.

In any event, even assuming that the trust requires the Trustee to determine that a beneficiary “needs” the income from the trust to support himself and maintain his general standard of living before a disbursement can be properly made, respondents failed to produce any evidence to indicate that Court did not in fact need the net income in 1998. While it was not disputed that, in 1998, Court was also the beneficiary of income from a separate, substantially endowed trust, respondents presented no evidence to indicate how much income Court received from this trust on a yearly basis. Further, even if Court did receive “substantial income” from

this trust, as respondents claim, respondents presented nothing to indicate that this income was sufficient to meet Court's needs, or, for that matter, what those needs were. Accordingly, respondents have failed to show that the Trustee abused its discretion in determining that Court was entitled to the net income from the Calvin P. Bentley Trust in 1998.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Richard A. Bandstra

/s/ Kirsten Frank Kelly